SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

IN THE MATTER OF THE APPLICATION OF THE STATEN ISLAND BRANCH OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE and THE NEW YORK STATE CONFERENCE OF BRANCHES OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE,

Petitioners-Applicants,

FOR ORDERS REGARDING THE UNSEALING OF MATERIALS WITH RESPECT TO THE GRAND JURY PROCEEDINGS RELATED TO THE DEATH OF ERIC GARNER

- Against –

DANIEL M. DONOVAN, JR., Richmond County District Attorney

Respondent.

Index No. 080009/2015

MEMORANDUM OF LAW

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STATEMENT OF THE CASE

Respondent Daniel M. Donovan, Jr., District Attorney of Richmond County, files this memorandum of law in opposition to the application by petitioners National Association for the Advancement of Colored People, Staten Island branch, and the New York State Conference of branches of that organization for various forms of relief in connection with the grand jury investigation into the death of Eric Garner.

INTRODUCTION

On July 17, 2014, Eric Garner died after being taken into police custody for an alleged

sale of untaxed cigarettes in the Tompkinsville area of Staten Island, New York. A number of videos depicting what had occurred surfaced. On August 19, 2014, the District Attorney announced that the matter would be presented to a dedicated grand jury which would be empaneled. That body heard evidence and on December 3, 2014, returned a no true bill.

Since that date, various parties have sought the unsealing of the grand jury minutes. Petitioners in this application, the local branch of the National Association for the Advancement of Colored People and the state conference of the association, also seek, among other things, a declaration that they have "independent standing" to appear in this proceeding; recusal of the entire Richmond County Supreme Court bench; an order directing the governor and the disciplinary committee with jurisdiction of Richmond County to take a position on the unsealing request; unsealing of the grand jury minutes; and disclosure of information about the grand jurors seated in this matter. The application should be denied in toto.

ARGUMENT

Petitioners seek "independent standing" to appear in this proceeding. In support of this branch of its application, petitioners cite to their long advocacy for the "civil and constitutional rights of people of color in their respective communities including, among those rights, the right to equal justice under the law" (Meyerson affirmation at para. 13). Petitioners maintain that they have a "direct and vested interest in advocating for and on behalf of all African American citizens and residents of Richmond County, New York and of the State of New York including the many tens of thousands of Black and Brown males and other males of color who reside in Richmond County and who reside throughout the State of New York" (Meyerson affirmation at para. 52). Petitioners also maintain that they ought to be afforded standing because of the greater likelihood that people of color will be engaged by the New York Police Department in numbers

disproportionate to their numbers in the county's population (Meyerson affirmation at para. 65). These allegations simply do not establish standing.

It is long established that for a party to have standing to sue, he must show that he has suffered an injury in fact, distinct from that of the general public. Transactive Corp. v. New York State Dep't of Soc. Servs., 92 N.Y.2d 579, 587 (1998); Society of Plastics Indus. v County of Suffolk, 77 NY2d 761, 771-774 (1991). Put another way, an allegation of standing grounded merely in the notion that an organization represents the interests of the public is simply insufficient to establish the requisite standing. Moreover, movant must demonstrate that the purported injury suffered falls within the zone of interests to be protected by the statute challenged. Society of Plastics Indus. v County of Suffolk, supra, at 774. This prerequisite ensures that a group or an individual "whose interests are only marginally related to, or even inconsistent with, the purposes of the statute cannot use the courts to further their own purposes at the expense of the statutory purposes." Id. at 774). This standing principle has been recognized in the context of disclosure of sealed grand jury minutes. In re District Attorney of Suffolk County, 58 N.Y.2d 436, 442 (1983) ("a party has standing to enforce a statutory right if its abuse will cause him injury and it may fall within the "zone of interest" protected by the legislation").

With these principles in mind, it is plain that petitioners do not have standing to seek any of the forms of relief being sought. By their own admission, petitioners purport to represent that portion of the public consisting of "black and brown males" who live in Richmond County. That is plainly insufficient to establish standing; it is no different than an allegation that standing is conferred merely by the fact that the applicant is a member of general class. There has been no assertion of any injury in fact to petitioners. In the absence of any injury to petitioners

themselves, they simply lack standing to make this application. And, even if what petitioners purport to do here is represent the class of black and brown males who live in Richmond County, they have utterly failed to show an injury to the class that would provide them with standing, much less connect to the unsealing application at issue here.

Further, it would appear that CPL Section 160.50 applies here, barring disclosure of the grand jury records to petitioners. Criminal Procedure Law § 160.50 provides that "upon the termination of a criminal action or proceeding against a person in favor of such person," "all official records and papers, … on file with the division of criminal justice services, any court, police agency, or prosecutor's office shall be sealed and not made available to any person or public or private agency." CPL § 160.50(1)(c). This matter ended with the filing of a dismissal pursuant to CPL § 190.60 and 190.75 (see Decision and Order of Stephen J. Rooney dated December 4, 2014). Such a dismissal pursuant to section 190.75 is considered a termination of a criminal proceeding in favor of the accused [see CPL § 160.50(3)(h)], with the result that CPL § 160.50 applies. Of course, CPL Section 160.50(1)(d) explicitly details those who are entitled to obtain an unsealing order, limiting those individuals to specific public officers; the list is to be "narrowly construed." Matter of Hynes v. Karassik, 47 N.Y.2d 659 (1979). The statute's specific and narrowly defined unsealing authorization which manifests an intent "to limit the exceptions to persons or groups having some association with law enforcement problems." In re Joseph M., 82 N.Y.2d 128, 133 (1993). Petitioner has failed to satisfy his identity as one who may obtain the requisite unsealing of this matter. Therefore, because petitioners are not among those categories of persons or agencies for whom unsealing is available, unsealing may not be ordered.

Petitioners also seek recusal not only of this Court, but of the entire Richmond County

Supreme Court bench. It is well settled, however, that "absent a legal disqualification under Judiciary Law § 14, a Trial Judge is the sole arbiter of recusal." And, while it may be the better practice in some situations for a court to disqualify itself in a special effort to maintain the appearance of impartiality, Corradino v. Corradino, 48 NY2d 894, 895 (1979), even then, when recusal is sought based upon "impropriety as distinguished from legal disqualification, the judge is the sole arbiter." People v. Moreno, 70 N.Y.2d 403, 406 (1987). Petitioners point to no statutory disqualification that would be applicable here (see Meyerson affirmation paras. 69-87); what this means, of course, is that movants have no right to the relief they seek and this Court is not obliged to recuse itself.

Nor are petitioners entitled to the unsealing of the grand jury minutes. It is well settled that unsealing of such minutes is available only upon a showing of a compelling and particularized need for the materials and then, only after the grand jury court has balanced the public interest in disclosure against the one favoring secrecy and decided that disclosure is appropriate. In re District Attorney of Suffolk County, 58 N.Y.2d at 444. The Second Department has considered an unsealing application in a context nearly identical to that presented here. In In re Hynes, 179 A.D.2d 760 (2d Dept. 1992), the Kings County District Attorney sought disclosure of minutes of the grand jury presentation that followed the grand jury's investigation into the vehicular homicide of seven year old African American Gavin Cato committed by a Hasidic driver. This incident, of course, sparked the 1991 Crown Heights race riots and stabbing death of Yankel Rosenbaum. There, the District Attorney sought disclosure of the grand jury minutes in order to "curb the community unrest which erupted when the Grand Jury failed to indict the driver of the automobile, and restore confidence in the Grand Jury system and in his office." The motion court denied the application and the Second Department

affirmed that denial. In brief, the court said that neither of those bases provided the requisite compelling and particularized need for disclosure of the minutes.

This case is no different; the basis for disclosure here is alleged to be the need to restore confidence in the criminal justice system. That theory was rejected in 1992 and is no more convincing now.

Petitioners also seek information about the 23 individuals who served on the grand jury. Information about jurors, however, is confidential and may be disclosed only upon application to the Appellate Division. See Judiciary Law Section 509(a); Newsday Inc. v. Sise, 71 N.Y.2d 146 (1987). As the Newsday Court explained, the purpose of Judiciary Law § 509(a) is to provide a cloak of confidentiality for such information about jurors -- the private details concerning their spouses' names, the names and ages of their children, their home telephone numbers, occupations, educational backgrounds, and criminal records, if any -- are to be protected from public disclosure.

This is particularly significant when it comes to those who are selected to serve on a grand jury. Among the reasons that grand jury secrecy is a sacrosanct principle in New York criminal practice is that the grand jury is the exclusive judge of the facts before it and must be allowed to render a decision free from outside influence, political pressure, or popular opinion. The grand jury must feel free to vote an indictment against the powerful and influential as well as to dismiss charges where they are not supported by the evidence, even where the accused is publicly despised or the alleged crime is notorious and heinous. Secrecy assures the jurors that they are free to make the right, albeit unpopular decision without fear of reprisal. Put another way, the grand jury stands between an accused or a target and mob justice and the disclosure of grand jurors' identities would merely provide an opportunity for those with a particular point of

view to influence the deliberations of the grand jury.

While disclosure of their identities or any information about them after that body has concluded its deliberations may not impact the particular deliberations in this case, the message that disclosure of the identities of grand jurors would send would ill serve the criminal justice system. Those selected for grand juries in cases which draw the attention that this one has would be reluctant if not resistant to service. Further, disclosure invites the possibility, if not likelihood, that individuals dissatisfied with the grand jury's decision would hound those who served on the grand jury.[1]

In short, the Judiciary Law renders the information petitioners seek confidential and beyond disclosure absent an order of the Appellate Division. Hence, this branch of the application must be denied without prejudice to its renewal before the Appellate Division.

Petitioners seek an order from this Court directing the governor and the grievance committee to advise the court of their respective positions with respect to the disclosure being sought. The Richmond County District Attorney does not and cannot purport to speak on behalf of either the governor or the grievance committee. With respect to the demand of the governor, however, the District Attorney would note that just introduced in the legislature is a bill authored by the governor entitled the Criminal Justice Reform Act of 2015, a copy of which is appended hereto. As described in the memorandum in support of the bill, it would create a Governor-appointed "independent monitor" responsible for reviewing certain grand jury investigations.

[1]There is no little irony in the efforts by movant NAACP to obtain information about the grand jurors. That group, of course, successfully challenged efforts by various governments in the South to obtain their membership lists, recognizing the deleterious effect disclosure of that information would have on the group's efforts to promote and maintain its membership. See, e.g., Bates v. City of Little Rock, 361 U.S. 516 (1960); Louisiana ex rel. Gremillion v. NAACP, 366 U.S. 293, 298 (1961). Surely, insuring the cooperation of witnesses and grand jurors in criminal proceedings is no less important than the ability of individuals to freely join any voluntary association in which they may be interested.

Specifically, the independent monitor would be empowered to review the evidence and facts in every case involving a police officer or peace officer, while acting in his or her official capacity, who may or may not be charged by a grand jury, with causing the death of an unarmed civilian. In those cases where the independent monitor concludes that the district attorney inappropriately declined prosecution or the grand jury presentation did not conform to the law, the monitor shall refer the case to the Governor for purposes of appointing a special prosecutor.

In addition, the bill would amend CPL §190.85 to require a district attorney to create a grand jury report where a grand jury dismisses charges or declines to return an indictment in instances where the subject of the investigation is a police officer or peace officer charged with causing the death of an unarmed civilian.

With respect to the request of the grievance committee, the District Attorney would simply urge that that body be permitted to proceed with its consideration of the grievance filed by petitioners in a fashion no different than that pursued when any grievance is filed. This will insure fairness not only to the target of the grievance, but will also insure that should the committee require information or testimonial evidence from anyone, that individual will speak freely to the committee without concern that what he or she may say will become public fodder.

* * * * *

In sum, petitioners simply are not entitled to the various forms of relief they seek. Their application must be denied.

CONCLUSION

The application must be denied.

Respectfully Submitted,

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NEW YORK STATE EXECUTIVE BUDGET

EXECUTIVE CRIMINAL JUSTICE REFORM ACT OF 2015
ARTICLE VII LEGISLATION

Legislative Bill Drafting Commission
12576-01-5

S. --------
Senate

IN SENATE--Introduced by Sen

--read twice and ordered printed, and when printed to be committed to the Committee on

-------- A.
Assembly

IN ASSEMBLY--Introduced by M. of A.

with M. of A. as co-sponsors

--read once and referred to the Committee on

CRIMIPLA
(Relates to criminal proceedings, the appointment of an independent monitor, reporting requirements and warrants)

CP L. independent monitor

AN ACT

to amend the criminal procedure law, in relation to criminal proceedings and the appointment of an independent monitor, to amend the executive law, in relation to the reporting requirements, and to amend the criminal procedure law, in relation to warrants

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

IN SENATE_____

Senate introducer's signature

The senators whose names are circled below wish to join me in the sponsorship of this proposal:

s15 Addabbo	s49 Farley	s63 Kennedy	s40 Murphy	s10 Sanders
s46 Amedore	s17 Felder	s34 Klein	s54 Nozzolio	s23 Savino
s11 Avella	s02 Flanagan	s28 Krueger	s58 O'Mara	s41 Serino
s42 Bonacic	s55 Funke	s24 Lanza	s62 Ortt	s29 Serrano
s04 Boyle	s59 Gallivan	s39 Larkin	s60 Panepinto	s51 Seward
s44 Breslin	s12 Gianaris	s37 Latimer	s21 Parker	s09 Skelos
s38 Carlucci	s22 Golden	s01 LaValle	s13 Peralta	s26 Squadron
s14 Comrie	s47 Griffo	s52 Libous	s30 Perkins	s16 Stavisky
s03 Croci	s20 Hamilton	s45 Little	s61 Ranzenhofer	s35 Stewart-Cousins
s50 DeFrancisco	s06 Hannon	s05 Marcellino	s48 Ritchie	
s32 Diaz	s36 Hassell-Thompson	s43 Marchione	s33 Rivera	s53 Valesky
s18 Dilan		s07 Martins	s56 Robach	s08 Venditto
s31 Espaillat	s27 Hoylman	s25 Montgomery	s19 Sampson	s57 Young

IN ASSEMBLY_____

Assembly introducer's signature

The Members of the Assembly whose names are circled below wish to join me in the multi-sponsorship of this proposal:

a049 Abbate	a045 Cymbrowitz	a135 Johns	a003 Murray	a016 Schimel
a092 Abinanti	a053 Davila	a077 Joyner	a133 Nojay	a140 Schimminger
a084 Arroyo	a034 DenDekker	a020 Kaminsky	a037 Nolan	a076 Seawright
a035 Aubry	a054 Dilan	a094 Katz	a130 Oaks	a087 Sepulveda
a120 Barclay	a081 Dinowitz	a074 Kavanagh	a069 O'Donnell	a065 Silver
a106 Barrett	a147 DiPietro	a142 Kearns	a051 Ortiz	a027 Simanowitz
a060 Barron	a115 Duprey	a040 Kim	a091 Otis	a052 Simon a082
Benedetto	a004 Englebright	a131 Kolb	a132 Palmesano	a036 Simotas
a042 Bichotte	a109 Fahy	a105 Lalor	a002 Palumbo	a104 Skartados
a079 Blake	a071 Farrell	a013 Lavine	a088 Paulin	a099 Skoufis
a117 Blankenbush	a126 Finch	a134 Lawrence	a141 Peoples-Stokes	a022 Solages
a062 Borelli	a008 Fitzpatrick	a050 Lentol		a114 Stec
a098 Brabenec	a124 Friend	a125 Lifton	a058 Perry	a110 Steck
a026 Braunstein	a095 Galef	a072 Linares	a059 Persaud	a127 Stirpe
a044 Brennan	a137 Gantt	a102 Lopez	a086 Pichardo	a112 Tedisco
a119 Brindisi	a007 Garbarino	a123 Lupardo	a089 Pretlow	a101 Tenney
a138 Bronson	a148 Giglio	a010 Lupinacci	a073 Quart	a001 Thiele
a046 Brook-Krasny	a080 Gjonaj	a121 Magee	a019 Ra	a061 Titone
a093 Buchwald	a066 Glick	a129 Magnarelli	a012 Raia	a031 Titus
a118 Butler	a023 Goldfeder	a064 Malliotakis	a006 Ramos	a055 Walker
a103 Cahill	a150 Goodell	a030 Markey	a078 Rivera	a146 Walter
a043 Camara	a075 Gottfried	a090 Mayer	a128 Roberts	a041 Weinstein
a145 Ceretto	a005 Graf	a108 McDonald	a056 Robinson	a024 Weprin
a033 Clark	a100 Gunther	a014 McDonough	a068 Rodriguez	a113 Woerner
a047 Colton	a139 Hawley	a017 McKevitt	a067 Rosenthal	a143 Wozniak
a032 Cook	a083 Heastie	a107 McLaughlin	a025 Rozic	a070 Wright
a144 Corwin	a028 Hevesi	a038 Miller	a116 Russell	a096 Zebrowski
a085 Crespo	a048 Hikind	a015 Montesano	a149 Ryan	
a122 Crouch	a018 Hooper	a136 Morelle	a009 Saladino	
a021 Curran	a097 Jaffee	a057 Mosley	a111 Santabarbara	
a063 Cusick	a011 Jean-Pierre	a039 Moya	a029 Scarborough	

1) Single House Bill (introduced and printed separately in either or both houses). Uni-Bill (introduced simultaneously in both houses and printed as one bill. Senate and Assembly introducer sign the same copy of the bill).

2) Circle names of co-sponsors and return to introduction clerk with 2 signed copies of bill and 4 copies of memorandum in support (single house); or 4 signed copies of bill and 8 copies of memorandum in support (uni-bill).

LBDC 12/19/14

Section 1. Section 190.75 of the criminal procedure law is amended by adding a new subdivision 5 to read as follows:

5. When the subject of a grand jury proceeding is a police officer as defined in subdivision thirty-four of section 1.20 of this chapter or a peace officer as defined in subdivision thirty-three of section 1.20 of this chapter, acting within his or her official capacity concerning criminal acts that include the use of deadly physical force against an unarmed person, and the district attorney declines to initiate a grand jury proceeding against such a police officer or peace officer, declines to request that a grand jury consider charges, does not present evidence to the grand jury, or the grand jury dismisses the charges or declines to return an indictment, the district attorney shall within sixty days provide all evidentiary materials gathered during the course of the investigation and, where applicable, the district attorney shall provide the grand jury minutes, all evidence presented to the grand jury, all grand jury exhibits, as well as any records and other evidence in the possession, custody and control of the district attorney, to the "independent monitor" who shall be appointed by the governor for a term of three years and who shall review the grand jury proceedings and all evidentiary materials gathered. The presented materials as described in this section shall remain confidential and shall not be subject to disclosure under article six of the public officers law. If the independent monitor determines that there were (a) substantial errors of such magnitude that there exists a reasonable probability that an indictment would have resulted but for these errors, and that the presumption of regularity afforded to such proceedings can no longer apply, or (b) there exists newly discovered evidence of such magnitude that there exists a reasonable probability that had such evidence been

presented to the grand jury, an indictment would have resulted, then the independent monitor shall refer the matter to the governor for purposes of appointment of a special prosecutor pursuant to section sixty-three of the executive law. For purposes of this article, the release of evidentiary materials and grand jury minutes by the district attorney to the independent monitor shall be considered acting within the district attorney's official duties and therefore not unlawful disclosure under section 215.70 of the penal law.

§ 2. Section 190.85 of the criminal procedure law is amended by adding a new subdivision 6 to read as follows:

6. When a grand jury, pursuant to subdivision one of section 190.75 of this article, dismisses the charges or declines to return an indictment and the subject of a grand jury proceeding is a police officer as defined in subdivision thirty-four of section 1.20 of this chapter or a peace officer as defined in subdivision thirty-three of section 1.20 of this chapter, acting within his or her official capacity concerning criminal acts that include the use of deadly physical force against an unarmed person, the district attorney may, pursuant to and in accordance with the rules and requirements of this section and section 190.90 of this article, regarding the creation of a grand jury report, create a grand jury report. The report shall include, but not be limited to, the following information: (i) charges presented; (ii) evidence presented; (iii) the grand jury minutes; and (iv) the grand jury quorum. With the exception of experts and public employees, the report must not contain the names or any other identifying information such as dates of birth, social security numbers, home addresses, telephone numbers, or any other information that if disclosed may reasonably lead to the public iden-

tification of a witness or any other person, other than the name of the

victim or the subject of the investigation, who was otherwise identified during the course of the grand jury presentation. The court must approve the contents of the report consistent with this subdivision prior to the release of the report by the district attorney to any civilian or disciplinary oversight board. For purposes of this article, the release of a grand jury report by the district attorney consistent with this section shall be considered acting within the district attorney's official duties and therefore not unlawful disclosure under section 215.70 of the penal law. In lieu of a grand jury report, the district attorney may issue a letter explaining: (a) his or her decision not to present a case where the subject of a grand jury proceeding is a police officer or peace officer acting within his or her official capacity concerning acts that include the use of deadly physical force against an unarmed person; or (b) the basis for the grand jury's decision to dismiss the indictment. For purposes of this article, the release of such a letter by the district attorney in lieu of a grand jury report shall be considered acting within the district attorney's official duties and therefore not unlawful disclosure under section 215.70 of the penal law.

§ 3. Subdivision 1 of section 190.90 of the criminal procedure law is amended to read as follows:

1. When a court makes an order accepting a report of a grand jury pursuant to paragraph (a) of subdivision one of section 190.85[,] or subdivision six of section 190.85 any public servant named therein may appeal the order; and when a court makes an order sealing a report of a grand jury pursuant to subdivision five of section 190.85, the district attorney or other attorney designated by the grand jury may appeal the order.

§ 4. Section 230.20 of the criminal procedure law is amended by adding a new subdivision 5 to read as follows:

5. Any party aggrieved by an order of the appellate division concerning a motion made pursuant to subdivision two of this section may seek leave to appeal from such order to the court of appeals, pursuant to subdivision three of section 450.90 of this chapter.

§ 5. Section 450.90 of the criminal procedure law is amended by adding a new subdivision 3 to read as follows:

3. Provided that a certificate granting leave to appeal is issued pursuant to section 460.20 of this title, an appeal may be taken to the court of appeals by any party aggrieved by an order of the appellate division concerning a motion made pursuant to subdivision two of section 230.20 of this chapter. Upon the request of either party, the hearing and determination of an appeal granted pursuant to this subdivision shall be conducted in an expeditious manner. The chief administrator of the courts, with the advice and consent of the administrative board of the courts, shall adopt rules for the expeditious briefing, hearing and determination of such appeals.

§ 6. Subdivision 4 of section 840 of the executive law is amended by adding a new paragraph (c) to read as follows:

(c) Establish a model law enforcement use of force policy suitable for adoption by any law enforcement agency throughout the state. The use of force policy shall include, but not be limited to, information on current law as it relates to use of force and acts or techniques a police officer or peace officer may not use in the course of acting in his or her official capacity. The chief of every local police department, each county sheriff, and the superintendent of state police must implement a use of force policy. The use of force policy should be

consistent with the model law enforcement policy as required by this section except that a department shall not be limited from imposing further restrictions on the use of force.

§ 7. The executive law is amended by adding a new section 837-u to read as follows:

§ 837-u. Reporting duties of law enforcement departments with respect to enforcement of violations and misdemeanors. 1. The chief of every police department, each county sheriff, and the superintendent of state police shall report, annually, to the division with respect to the total number of arrests made for non-criminal violations and misdemeanors. Such reports shall be in the form and manner prescribed by the division and shall contain such information as the division deems necessary.

2. The chief of every police department, each county sheriff, and the superintendent of state police shall report, annually, to the division with respect to the number of instances where a police officer as defined in subdivision thirty-four of section 1.20 of the criminal procedure law or a peace officer as defined in subdivision thirty-three of section 1.20 of this chapter, engages in conduct that was a possible factor in the death of another during the enforcement of a violation or misdemeanor. Such reports shall be in the form and manner prescribed by the division and shall contain such information as the division deems necessary.

3. The chief of every police department, each county sheriff, and the superintendent of state police shall report, annually, to the division with respect to the total number of appearance tickets as defined in subdivision twenty-six of section 1.20 of the criminal procedure law and summonses as defined in subdivision twenty-seven of section 1.20 of the criminal procedure law. Such reports shall be in the form and manner

prescribed by the division and shall contain information about the subject of each appearance ticket or summons including but not limited to his or her age, sex, race and ethnicity.

§ 8. Subdivision 3 of section 690.35 of the criminal procedure law is amended by adding a new paragraph (f) to read as follows:

(f) A statement whether the application for the warrant had been previously submitted to another judge, and if so, the statement must include the name of the judge or judges to whom the application was previously submitted, the result of such application or applications, and when such application or applications were made.

§ 9. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

§ 10. This act shall take effect on the thirtieth day after it shall have become a law.

NEW YORK STATE EXECUTIVE BUDGET

EXECUTIVE CRIMINAL JUSTICE REFORM ACT OF 2015
ARTICLE VII LEGISLATION

MEMORANDUM IN SUPPORT

MEMORANDUM IN SUPPORT

A BUDGET BILL submitted by the Governor in
Accordance with Article VII of the Constitution

AN ACT to amend the criminal procedure law, in relation to criminal proceedings and the appointment of an independent monitor, to amend the executive law, in relation to the reporting requirements, and to amend the criminal procedure law, in relation to warrants

Purpose:

To restore the public's trust in New York's criminal justice system, this bill would: strengthen the State's criminal procedure laws as they relate to grand juries and change of venue motions; require additional information on search warrant applications; require a statewide "use of force" policy; and reinforce existing reporting requirements of certain law enforcement activities under the Executive Law.

Statement in Support and Summary of Provisions:

A. Independent Monitor

This bill would create a Governor-appointed "independent monitor" responsible for reviewing certain grand jury investigations. Specifically, the independent monitor would be empowered to review the evidence and facts in every case involving a police officer or peace officer, while acting in his or her official capacity, who may or may not be charged by a grand jury, with causing the death of an unarmed civilian. In those cases where the independent monitor concludes that the district attorney inappropriately declined prosecution or the grand jury presentation did not conform to the law, the monitor shall refer the case to the Governor for purposes of appointing a special prosecutor.

B. Grand Jury Report

This bill would amend CPL §190.85 to require a district attorney to create a grand jury report where a grand jury dismisses charges or declines to return an indictment in instances where the subject of the investigation is a police officer or peace officer charged with causing the death of an unarmed civilian.

C. Change of Venue

This bill would establish an expedited appeals process directly to the Court of Appeals in cases where the appellate division declined a motion for a change of venue.

D. Reporting by Law Enforcement Agencies

This bill would require all state law enforcement agencies to annually report to the Division of Criminal Justice Services (DCJS) the number of arrests made for violations and misdemeanors. The bill would also require law enforcement agencies to annually report to DCJS the number of instances where police conduct may have resulted in the death of a person during the course of executing an arrest for a violation or a misdemeanor. Finally, it would require all law enforcement agencies to file an annual report with DCJS containing race information, and other data, about the subject of each appearance ticket or summons issued by that agency.

E. Statewide Use of Force Policy

The bill would require the Municipal Police and Training Council to create and promulgate statewide, a model “use of force” policy for State and local law enforcement agencies. Additionally, statewide law enforcement agencies would be required to adopt their own use of force policy and may use the MPTC model as a guide.

F. Search Warrant Application

The bill would require that in every application for a search warrant, the applicant must provide the judge with information about whether the search warrant had previously been submitted to that judge or any other judge. Additionally, the applicant must provide the result of the previous submissions and the name or names of the others judges who acted on such submissions.

Budget Implications:

Enactment of this bill is necessary to implement the 2015-16 Executive Budget due to the potential cost of an "independent monitor" appointed by the Governor.

Effective Date:

This bill would take effect thirty days after it is signed into law.